

## Bureau of Ocean Energy Management Withdraws Contentious Sole Liability Orders for More Review

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On February 17, 2017, the Bureau of Ocean Energy Management (“BOEM”) withdrew its December 2016 orders requiring sole liability properties to provide additional security in the form of supplemental bonds for plugging, abandoning, and decommissioning Outer Continental Shelf (“OCS”) wells, platforms and other facilities. BOEM announced that the withdrawal will allow the Trump Administration time to review the stringent requirements for OCS oil and gas lease and grant holders. BOEM had previously issued these orders under the controversial Notice to Lessees and Operators NTL No. 2016-N01 (“NTL 2016-N01”). After receiving industry pushback, BOEM announced that it would focus on sole liability properties and properties where there is a substantial risk of nonperformance in regard to decommissioning liabilities. Now, BOEM appears to have put entire implementation on hold pending its six month review of the requirements under NTL 2016-N01.

This withdrawal comes on the heels of BOEM’s decision to delay implementation of NTL 2016-N01 by six months that would provide valuable time for OCS producers and operators to identify and distribute risk in complicated multi-party business relationships and develop viable plans to implement the new decommissioning obligations. The six-month extension did not apply to sole liability properties, which include OCS leases, pipeline rights-of-way (“ROWS”), and rights-of-use and easement (“RUEs”) for which the holder is the only liable party to meet the lease and/or grant obligations. BOEM had deemed sole liability properties to be a greater risk to American taxpayers arising from decommissioning liabilities.

BOEM acknowledges the complicated nature of and difficulties associated with securing sufficient financial assurances and welcomes continued industry engagement on this important issue. Any implementation issues associated with those orders will be discussed as part of the ongoing, six-month review process where BOEM is dialoguing with industry participants to gather input and feedback. BOEM reserves the right to re-issue the withdrawn sole liability orders if it determines there is a substantial risk of nonperformance of the interest holder’s decommissioning liabilities.

Behind the curtain, deficiencies continue to hamper OCS regulators. Approximately one week before BOEM’s withdrawal announcement, the U.S. Government Accountability Office (“GAO”) revised its list of government programs at high risk for waste, fraud, abuse and mismanagement. The GAO report notes several concerning issues with the Bureau of Safety and Environmental Enforcement (“BSEE”), including BSEE’s use of outdated investigative policies and procedures. Despite reform efforts, BSEE has not fully addressed deficiencies in its investigative, environmental compliance, and enforcement capabilities identified by investigations. This led the GAO to conclude that BSEE cannot sufficiently investigate or ensure quality control. The GAO also cautioned that BSEE has not developed criteria needed to guide the implementation of its enforcement tools, causing confusion and compliance concerns among industry participants.

Putting aside what role continued GAO input may have, the withdrawal provides industry players with some breathing room to grapple with the impacts of the significantly increased

decommissioning cost estimates issued by BSEE late last year that were intended to serve as the liability targets for BOEM's financial assurance program. It also will be seen by many as a ray of light that the program will be substantially revamped to avoid the crippling financial assurance demands. Nonetheless, the withdrawal itself does not definitively indicate what the ultimate reissuance will look like other than the laudatory plaudits and tips of the hat to coordination with industry participants.

The February 17 Notice can be found [here](#).

For more information please contact one of the lawyers listed below.